



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion No. 03-004 (Item 03-004)

The issue is whether a Fire Chief can enter into an agreement with a publisher and a bookseller to participate in the publication and sale of a book about firefighters if the publisher and bookseller agree to donate all proceeds to the Chief or County for contribution to charity. We believe that the Fire Chief can enter into this agreement if authorized by the County Executive.

A publisher and book seller are soliciting a Chief's help in publishing and selling a book about firefighters. Under the proposed agreement, the publisher and bookseller expect the Fire Chief to do the following:

1. grant any necessary interviews,
2. contribute photographs for publication,
3. make personal appearances at the bookseller's store to "meet and greet" the public and sign autographs,
4. provide a fire engine on-site "to draw excitement and participation from the public,"
5. write a letter supporting the project to generate interest among other fire chiefs around the county, and
6. provide local politicians to help create media interest to drive the promotion.

In return, the publisher and book seller promise to donate all proceeds from book sales to the Chief or the County for contribution to charity.

We believe the Fire Chief's role in this agreement is properly viewed as soliciting a gift rather than selling books because the books are actually sold by the book seller and/or the publisher who, in turn, donate the proceeds to the Fire Chief or the County for contribution to a firefighter related charitable fund. This distinction between soliciting gifts and selling books is important because a public employee may solicit a gift from any person, during official work hours, while identifiable as a public employee or at a County agency, for the benefit of a County agency or a nonprofit organization formally cooperating on a program with a County agency, if the County Executive authorizes the solicitation by executive order printed in the County Register. That order must designate:

1. the public employee authorized to solicit the gift;
2. the purpose for which the gift is sought;
3. the manner in which the public employee may solicit the gift;
4. the person or class of persons the public employee may solicit; and
5. the type of gifts the public employee may solicit.

It is key that all proceeds go to the County for the benefit of a County agency or a nonprofit organization formally cooperating on a program with a County agency. If either the publisher or the bookseller gain from this activity, then the Fire Chief's role will no longer qualify as the solicitation of a gift. Instead, the Fire Chief will be using the prestige of office for the gain of another — the publisher and the bookseller. That is prohibited by § 19A-14(a).

FOR THE COMMISSION:

A handwritten signature in black ink, appearing to read "Elizabeth K. Kellar". The signature is written in a cursive, flowing style.

Elizabeth K. Kellar, Chair
March 19, 2003